

## SEPARATE STATEMENT OF CHAIRMAN KENNARD

Re: *Applications of Pine Bluff Radio, Inc. and Seark Radio, Inc., File Nos. BAL-970103EA, BALH-970103EB, BALH-970103EC*

Although I agree with the result reached in this particular case, I write separately because I believe that my colleagues Commissioners Ness and Tristani raise valid concerns in their joint dissent. Indeed, I am inclined to agree with their view that the methodology the Commission now uses in calculating a radio market and determining compliance with the numerical station limits of the ownership rules can produce anomalous results. Where I part company with them is that I do not believe that an individual case – particularly this case – provides an appropriate forum for resolving their concerns.

First, Craig Eastham, the Seark principal whose interests in KDDA(AM) and KXFE(FM) trigger the debate over the proper market definition, has proposed to sell these stations to an unrelated party and we here approve that sale. As a result, the “anomaly” in our application of the radio market definition of which my colleagues complain will no longer have any decisional significance in the Pine Bluff market. As noted in our decision, this fact does not render the issue “moot” in a legal sense, but it does remove the need to resolve it in this case.

Second, it has long been the Commission’s and the courts’ view that altering fundamental components of broadly applicable regulatory schemes is not best accomplished through adjudication. As the Commission noted in its decision in *Capital Cities/ABC, Inc.*, even though it was discussing a waiver policy rather than a definitional issue:

[w]e do not believe ... that it is appropriate to amend waiver policies of broad applicability in a restricted adjudicatory proceeding in which third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record.

11 FCC Rcd 5841, 5888 (1996). The radio market definition issue that concerns Commissioners Ness and Tristani is raised in our pending Biennial Regulatory Review proceeding. *Notice of Inquiry* in MM Docket No. 98-35 (1998 Biennial Regulatory Review), 13 FCC Rcd 11276, 11283 (1998). I see nothing in the present case which compels us to precipitously alter our market criteria here and forsake the more considered review and the fair notice to our regulatees of that matter which the Biennial Proceeding would provide.